

EXHIBIT A



National Immigrant Justice Center

Sent Via U.S. First Class Mail

December 20, 2010

Ms. Catrina Pavlik-Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act/Privacy Office
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009

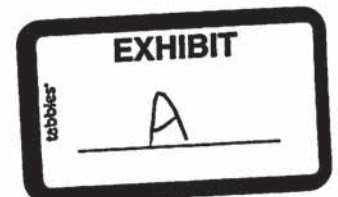
Re: Freedom of Information Act Request

Dear Ms. Pavlik-Keenan:

This letter constitutes a request for information pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 on behalf of Heartland Alliance's National Immigrant Justice Center ("NIJC"). NIJC is a not-for-profit agency that provides immigration legal services to low-income immigrants, refugees and asylum seekers. NIJC seeks information regarding the number of minors in the custody of Department of Homeland Security ("DHS"), including Immigration and Customs Enforcement ("ICE") who are determined to not fall within the definition of "unaccompanied" as defined by 6 U.S.C. §279(g)(2). For that purpose, NIJC seeks disclosure of any and all records, including all electronic documents and communications in the custody DHS/ICE, which fit the following description:

1. Please provide the following electronic records from the DHS's central database for all minors in ICE custody from October 1, 2008 through September 30, 2010. Please provide the data :
 - (a) As to each respondent, the zip code of their home address (NIJC assumes that the full address would be protected by privacy laws);
 - (b) Year and month of birth for each individual/respondent;
 - (c) A Number for each individual/respondent.
 - (d) Date of apprehension by DHS, including ICE, for each individual;
 - (e) Date of release from detention for each individual;
 - (f) Date individual was transferred to the care of the Office of Refugee Resettlement ("ORR") for minors determined to be "unaccompanied;"
 - (g) The Immigration Court which handled the individuals' case;
 - (h) The time period case was assigned to each individual court listed;
 - (i) If individual was not transferred to ORR's custody, date individual was released from DHS's custody;
 - (j) Custody history for each individual, including date detained and date released;
 - (k) An electronic record of whether or not any EOIR-28 forms were filed in the case;
 - (l) Date of filing of E-28(s) by attorney(s) or representative(s), if any;
 - (m) An electronic record of whether or not any G-28 forms were filed in the case;
 - (n) Date of filing of G-28(s) by attorney(s) or representative(s), if any;
 - (o) End date of representation for each attorney;

Heartland Alliance for Human Needs & Human Rights | National Immigrant Justice Center
208 S. LaSalle Street, Suite 1818, Chicago, Illinois 60604 | ph: 312-660-1370 | fax: 312-660-1505 | www.immigrantjustice.org



- (p) Date Notice to Appear (NTA) was issued to each individual;
- (q) Date NTA was filed with the immigration court for each individual;
- (r) Date of first master calendar hearing, if any;
- (s) Date of conclusion of removal proceedings;
- (t) Forms of relief (if any) which were sought in the case;
- (u) Whether those relief applications were granted or denied;
- (v) The address of all detention centers where each individual is or was held;

Please provide a single report generated from ICE's centralized computer database with all of the fields requested above and in which each individual/respondent is identified by his or her A number. Please prepare the report in such a way that it will be accessible using a standard database program (such as Excel). Data in a delimited field database is also acceptable. If a delimited field database is used, please indicate the delimiter (tab, comma, etc.). Compact discs are the preferred media. Please provide data that is current as of the day of production of the data.

2. Please provide records which explain any coding included in the response to request #1, so as to enable us to understand your response to the FOIA request.

To the extent that these reports include information relating to particular individuals who might have privacy interests in their contents, please excise this information in the least disruptive manner possible, so as to permit the report to be understood in the absence of that material.

This information is sought for the purpose of determining the number and locations of minors held in the custody of ICE, including those transferred to ORR custody. NIJC seeks to analyze the length of detention for minors in ICE custody.

If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each record. Please also state the number of documents or portions thereof being withheld, the number of pages of each document being withheld, and the dates of the documents being withheld. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i).

The documents subject to this request are not sought for any commercial use; they will be used to educate the American public regarding any delays in handling detained immigration cases. Thus, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). As to any additional search expenses, please waive any fees because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above. 5 U.S.C. §552(a)(4)(A)(iii). The question of delays in deciding immigration cases has been the subject of significant public interest; it would be in the public's interest to understand this phenomenon better. If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before filing this request.

Please reply to this request within twenty working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i).

If you have any questions regarding this request, please feel free to contact me via email at mruizvclasco@heartlandalliance.org or call me at my direct line, 312-660-1360. Thank you in advance for your kind attention to this matter.

Sincerely,

Mony Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center

EXHIBIT B



National Immigrant Justice Center

U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 12, 2011

U.S. Immigration Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
800 North Capitol Street, N.W., Stop 5009
Washington, D.C. 20536-5009
Attn: FOIA Appeal

Re: Freedom of Information Act Appeal of Request for Records for Minors in ICE Custody
October 1, 2008, through September 30, 2010. **Control Number 2011FOIA4455.**

Dear Sir or Madam:

This is a timely appeal under the Freedom of Information Act.

On March 2, 2011, the National Immigrant Justice Center (NIJC) requested documents from U.S. Immigration & Customs Enforcement (ICE) under the Freedom of Information Act (FOIA). NIJC's request was assigned the control number 2011FOIA4455, in a response letter dated December 30, 2011, signed by FOIA Officer, Catrina M. Pavlik-Keenan.


A copy of NIJC's FOIA request is enclosed.

More than 30 business days have now elapsed since the filing of NIJC's original FOIA request, and NIJC has yet to receive any substantive response. We are therefore treating ICE's failure to respond as a denial. Additionally, ICE has not indicated whether our request for a fee waiver has been granted and has only indicated that our request will be held in abeyance pending the quantification of responsive records.

We anticipate a response to this appeal from your office within 20 business days, as stipulated by 5 U.S.C. § 552(a)(6)(A)(ii).

Thank you for your attention to this matter. Please contact us at mruiizvelasco@heartlandalliance.org or 312/660-1360 if you have any questions or would like any clarification of the requests above.

Sincerely,


Mony Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center

EXHIBIT

B



U.S. Department of Homeland Security
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

December 30, 2010

MONY RUIZ-VELASCO
NATIONAL IMMIGRANT JUSTICE CENTER
208 S. LASALLE STREET, SUITE 1818
CHICAGO, IL 60604

Re: 2011FOIA4455

Dear Mr. Ruiz-Velasco:

This acknowledges receipt of your December 20, 2010, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for records from the DHS's central database for all minors in ICE custody from October 1, 2008 through September 30, 2010. Your request was received in this office on December 30, 2010.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1982 open requests ahead of yours.



Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed

with your request.

Your request has been assigned reference number **2011FOIA4455**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or 1-866-633-1182.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer 



National Immigrant Justice Center

Sent Via U.S. First Class Mail

December 20, 2010

Ms. Carina Pavlik Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act Privacy Office
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009

Re: Freedom of Information Act Request

Dear Ms. Pavlik-Keenan:

This letter constitutes a request for information pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 on behalf of Heartland Alliance's National Immigrant Justice Center ("NIJC"). NIJC is a not-for-profit agency that provides immigration legal services to low-income immigrants, refugees and asylum seekers. NIJC seeks information regarding the number of minors in the custody of Department of Homeland Security ("DHS"), including Immigration and Customs Enforcement ("ICE") who are determined to not fall within the definition of "unaccompanied" as defined by 6 U.S.C. §279(g)(2). For that purpose, NIJC seeks disclosure of any and all records, including all electronic documents and communications in the custody DHS/ICE, which fit the following description:

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 - (c) A Number for each individual/respondent.
 - (d) Date of apprehension by DHS, including ICE, for each individual;
 - (e) Date of release from detention for each individual;
 - (f) Date individual was transferred to the care of the Office of Refugee Resettlement ("ORR") for minors determined to be "unaccompanied;"
 - (g) The Immigration Court which handled the individuals' case;
 - (h) The time period case was assigned to each individual court listed;
 - (i) If individual was not transferred to ORR's custody, date individual was released from DHS's custody;
 - (j) Custody history for each individual, including date detained and date released;
 - (k) An electronic record of whether or not any EOIR-28 forms were filed in the case;
 - (l) Date of filing of E-28(s) by attorney(s) or representative(s), if any;
 - (m) An electronic record of whether or not any G-28 forms were filed in the case;
 - (n) Date of filing of G-28(s) by attorney(s) or representative(s), if any;
 - (o) End date of representation for each attorney;

- (p) Date Notice to Appear (NTA) was issued to each individual;
- (q) Date NTA was filed with the immigration court for each individual;
- (r) Date of first master calendar hearing, if any;
- (s) Date of conclusion of removal proceedings;
- (t) Forms of relief (if any) which were sought in the case;
- (u) Whether those relief applications were granted or denied;
- (v) The address of all detention centers where each individual is or was held;

Please provide a single report generated from ICE's centralized computer database with all of the fields requested above and in which each individual/respondent is identified by his or her A number. Please prepare the report in such a way that it will be accessible using a standard database program (such as Excel). Data in a delimited field database is also acceptable. If a delimited field database is used, please indicate the delimiter (tab, comma, etc.). Compact discs are the preferred media. Please provide data that is current as of the day of production of the data.

2. Please provide records which explain any coding included in the response to request #1, so as to enable us to understand your response to the FOIA request.

To the extent that these reports include information relating to particular individuals who might have privacy interests in their contents, please excise this information in the least disruptive manner possible, so as to permit the report to be understood in the absence of that material.

This information is sought for the purpose of determining the number and locations of minors held in the custody of ICE, including those transferred to ORR custody. NIJC seeks to analyze the length of detention for minors in ICE custody.

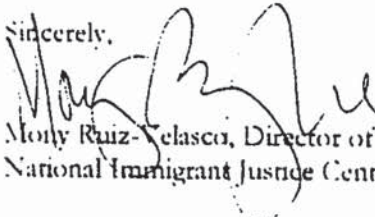
If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each record. Please also state the number of documents or portions thereof being withheld, the number of pages of each document being withheld, and the dates of the documents being withheld. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i).

The documents subject to this request are not sought for any commercial use; they will be used to educate the American public regarding any delays in handling detained immigration cases. Thus, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). As to any additional search expenses, please waive any fees because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above. 5 U.S.C. §552(a)(4)(A)(iii). The question of delays in deciding immigration cases has been the subject of significant public interest; it would be in the public's interest to understand this phenomenon better. If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before filing this request.

Please reply to this request within twenty working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i).

If you have any questions regarding this request, please feel free to contact me via email at mruizelasco@heartlandalliance.org or call me at my direct line, 312-660-1360. Thank you in advance for your kind attention to this matter.


Sincerely,



Mony Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center

EXHIBIT C




U.S. Department of Homeland Security
800 North Capital Street NW, Ste. 585
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

April 22, 2011

Mony Ruiz-Velasco
National Immigrant Justice Center
208 S. LaSalle Street, Suite 1818
Chicago, IL 60604

RE: ICE FOIA Case Number 2011FOIA4455

Dear Mr. Ruiz-Velasco:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated December 20, 2010. You have requested copies of the following records:

All minors in ICE custody from October 1, 2010 through September 30, 2010

- (a) As to each respondent, the zip code of their homes address;
- (b) Year and month of birth for each individual/respondent;
- (c) A number for each individual/respondent.
- (d) Date of apprehension by DHS, including ICE, for each individual;
- (e) Date of release from detention for each individual;
- (f) Date individual was transferred to the care of the Office of Refugee Resettlement (ORR) for minors determined to be unaccompanied;
- (g) The Immigration Court which handled the individual's case;
- (h) The time period case was assigned to each individual court listed;
- (i) If the individual was not transferred to ORR's custody, date individual was released from DHS's custody;
- (j) Custody history for each individual, including date detained and date released;
- (k) An electronic record of whether or not any EOIR-28 forms were filed in the case;
- (l) Date of filing of E-28(s) by attorney(s) or representative (2), if any;
- (m) An electronic record of whether or not any G-28 forms were filed in the case;
- (n) Date of G-28(s) by attorney(s) or representative(s), if any;
- (o) End date of representation for each attorney;
- (p) Date Notice to Appear (NTA) was issued to each individual;
- (q) Date NTA was filed with the immigration court for each individual
- (r) Date of first master calendar hearing, if any;
- (s) Date of conclusion of removal proceedings;
- (t) Forms of relief (if any) which were sought in the case;
- (u) Whether those relief application were granted or denied;
- (v) The address of all detention centers where each individual is or was held;

www.ice.gov



Your request has been processed under the FOIA, 5 U.S.C. § 552. A search of the ICE Homeland Security Investigations for records responsive to your request produced a 470 page Excel worksheet that is responsive to your request. The Excel worksheet details in response to your request the arrest date, release date, date transferred to ORR, detention history including booking and book out dates and the address of all detention centers where each individual is/was held. All other requested data points are not available. After review of those documents, I have determined that portions of the 470 page worksheet will be withheld pursuant to Exemption(s) (k)(2) of the Privacy Act and Exemption(s) (b)(6), (b)(7)(C) of the FOIA as described below.

Privacy Act Exemption (k)(2) protects investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence.

ICE has applied Exemptions 6 and 7(C) to protect from disclosure the names of DHS employees and third parties contained within the documents.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

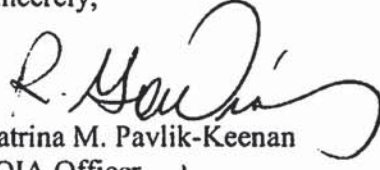

You have the right to appeal our withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 800 North Capitol Street, N.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.¹

If you need to contact our office about this matter, please refer to FOIA case number **2011FOIA4455**. This office can be reached at (202) 732-0300 or (866) 633-1182.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer 

Enclosure(s): 1 CD containing Excel Spreadsheet, 470 pages

¹ 6 CFR § 5.11(d)(4).

EXHIBIT D



National Immigrant Justice Center

17101 ETERNIGHT M. HL

June 13, 2011

U.S. Immigration Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
800 North Capitol Street, N.W., Stop 5009
Washington, D.C. 20536-5009
Attn: FOIA Appeal

Re: Freedom of Information Act Appeal of Request for Records for Minors in ICE
Custody October 1, 2008, through September 30, 2010. **Control Number**
2011FOIA4455.

Dear Sir or Madam:

This is a timely appeal under the Freedom of Information Act. On March 2, 2011, the National Immigrant Justice Center (NIJC) requested documents from U.S. Immigration & Customs Enforcement (ICE) under the Freedom of Information Act (FOIA). NIJC's request was assigned the control number 2011FOIA4455, in a response letter dated December 30, 2011, signed by FOIA Officer, Catrina M. Pavlik-Keenan. On April 20, 2011, as ICE did not respond to NIJC's request, NIJC filed an appeal of ICE's adverse determination from the March 2, 2011 FOIA. *See Attached FOIA Appeal.*

Subsequently, on April 22, 2011, ICE provided a partial response to NIJC's FOIA request above. ICE partially denied NIJC's FOIA request pursuant to the following exemptions:

Privacy Act Exemption (k)(2) regarding investigatory material compiled for law enforcement purposes ... which did not result in the loss of a right, benefit or privilege ... or which would identify a source who furnished information ... In its response, ICE states that it applied Exemptions 6 and 7(C) to protect disclosure the names of DHS employees and third parties contained within the documents.

FOIA Exemption 7(C) regarding records compiled for law enforcement purposes stating that "I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information."

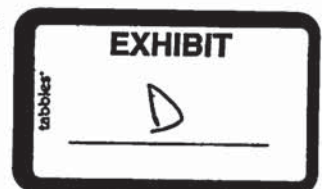
FOIA Exemption 6, regarding personnel or medical files and similar files.

In its partial denial, ICE does not clarify which exemption applies to which denial.

Of the twenty-two specific requests made by NIJC, ICE only responded to four. ICE declined to provide NIJC with the following information requested:

- (a) As to each respondent, the zip code of their home address (NIJC assumes that the full address would be protected by privacy laws);

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208 S. LaSalle Street, Suite 1818, Chicago, Illinois 60604 | ph: 312-660-1370 | fax: 312-660-1500 | www.immigrantjustice.org



- (b) Year and month of birth for each individual/respondent;
- (c) A Number for each individual/respondent.
- (d) Date of release from detention for each individual;
- (e) Date individual was transferred to the care of the Office of Refugee Resettlement ("ORR") for minors determined to be "unaccompanied;"
- (f) The Immigration Court which handled the individuals' case;
- (g) The time period case was assigned to each individual court listed;
- (h) An electronic record of whether or not any EOIR-28 forms were filed in the case;
- (i) Date of filing of E-28(s) by attorney(s) or representative(s), if any;
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- (k) Date of filing of G-28(s) by attorney(s) or representative(s), if any;
- (l) End date of representation for each attorney;
- (m) Date Notice to Appear (NTA) was issued to each individual;
- (n) Date NTA was filed with the immigration court for each individual;
- (o) Date of first master calendar hearing, if any;
- (p) Date of conclusion of removal proceedings;
- (q) Forms of relief (if any) which were sought in the case;
- (r) Whether those relief applications were granted or denied;

In its April 22, 2011 response, ICE does not specify which exception it applies to each of the specific requests. Thus, NIJC is unable to specifically address each exception as ICE did not, with specificity, make clear how the exceptions were applied. NIJC seeks information to determine the number of minors in ICE custody, information regarding meaningful access to counsel, length of detention, and information regarding determinations regarding transfer to ORR custody.

ICE claims an exception pursuant to Privacy Act Exemption (k)(2) regarding investigatory material compiled for law enforcement purposes ... which did not result in the loss of a right, benefit or privilege ... or which would identify a source who furnished information ... NIJC seeks information regarding minors in ICE custody. Exceptions under (k)(2) seem to include: (1) material compiled for criminal investigative law enforcement purposes, by non-principal function criminal law enforcement entities; and (2) material compiled for other investigative law enforcement purposes, by any agency. ICE erred when applying this exception.

ICE also applied FOIA Exemption 7(C) regarding records compiled for law enforcement purposes stating as follows: "I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information." Arguments made below, regarding FOIA exception 6 apply to 7(C) as well. There is a significant public interest in disclosure of the information requested by NIJC, including determining the number of minors detained in ICE custody, as well as other information regarding the length of detention, location, access to counsel, and length of proceedings.

In its decision, ICE states that it declines to provide certain information pursuant to 5 U.S.C. § 552(b)(6) of the Freedom of Information Act. ICE does not state what information it declines to provide pursuant to such exemption. Although ICE does not state which exception applies to which information, if ICE is applying exception (b)(6) to its failure to disclose A numbers, its determination to apply this exception is in error.

Section (b)(6) states as follows:

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

Determining whether information must be withheld under FOIA Exemption 6 requires a two-part inquiry: (1) first determine whether the records at issue contain the type of information that would be in a medical or personnel file, and (2) second, balance the public's need for information against the individual's privacy interest to determine whether disclosure results in a "clearly unwarranted invasion of personal privacy." See e.g., Wood v. FBI, 432 F.3d 77, 86 (2nd Cir. 2005); 5 U.S.C. § 552(b)(6).

First, A numbers do not fall under the scope of "similar files" meant to be protected by Exemption 6. The key to the analysis is the personal nature of the information at issue. Florida Medical Ass. v. Dep't of Health, Education & Welfare, 479 F. Supp. 1291, 1304 (M.D. Fla. 1979). A "similar file" is one that contains information that applies to a particular individual, disclosure of which would cause some "special embarrassment" to that individual. See e.g., Pacific Molasses Co. v. NLRB, 577 F.2d 1172, 1181 (5th Cir. 1978). The Fourth Circuit, for example, found that a "similar file" would have characteristics similar to those of medical files "to such extent as they contain 'intimate details' of a highly personal nature." Robles v. Environmental Protection Agency, 484 F.2d 843, 845 (4th Cir. 1973).

Unlike A numbers, there are strong confidentiality laws and regulations that protect medical and personnel files. Hospitals, for example, do not publicly display medical files or information of their patients. Employers are also not allowed to publicly share personnel files. By contrast, A numbers are readily made public by the same agency that is now seeking exception. They are commonly displayed on: published decisions of the Board of Immigration Appeals ("Board"), see e.g., Matter of Monges, 25 I&N Dec. 246 (BIA 2010); unpublished decisions of the Board that are released without having been redacted to Westlaw, see e.g., In Re: Doris Veliz-Castro, File No. A096 329 351 (BIA, Feb. 1, 2010); and published decisions of the Courts of Appeals. See e.g., Gatimi v. Holder, 2010 U.S. App. LEXIS 9981 (7th Cir. 2010). By regulation, removal proceedings occur in open court unless an Immigration Judge orders otherwise, Detroit Free Press v. Ashcroft, 303 F.3d 681, 701 (6th Cir. 2002); see also INA §240(1), (2). Employees of EOIR routinely disclose A numbers in Immigration Court, both in writing and orally, in particular by orally announcing A numbers on the record during court hearings.

Further, there is no risk of "special embarrassment" to the individual. Nor do A numbers have any particular significance for purposes of financial records, unlike social security numbers.

Second, even assuming that A numbers are the type of information meant to fall under the scope Exemption 6, the numbers still cannot be withheld unless disclosure would result in a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). To make this determination, the public's interest in disclosure must be balanced against the individuals' privacy interests, if a measurable privacy interest exists. Dep't of Air Force v. Rose, 425 U.S. 352, 372 (1976).

The privacy interest in an individual's A number is *de minimus*. As described above, A numbers are available in the public record, and are regularly used in a public forum. The A numbers at issue have been disclosed during formal legal proceedings before an Immigration Judge, and there is no indication that the individuals were ever given any reason to believe that their A numbers are private information. Thus, the privacy interest is minimal. See e.g., Associate Press v. U.S. Dep't of Defense, 410 F. Supp. 2d 147, 150 (S.D.N.Y. 2006). Because any privacy interest in A numbers would be *de*

minimus, the public interest in disclosure is irrelevant here. See Fed. Labor Relations Auth. v. U.S. Dep't of Veterans Affairs, 958 F.2d 503, 509 (2nd Cir. 1992).

Third, even assuming that disclosure of the A numbers would result in a measurable invasion of privacy, that individual privacy interest must still be weighed against the public's interest in disclosure. Rose, 425 U.S. at 372. That analysis centers on "the extent to which disclosure of the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to." Bibles v. Oregon Natural Desert Ass'n, 519 U.S. 355, 355-56 (1997); see also U.S. Dep't of State v. Ray, 502 U.S. 164, 177 (1991). Here, NIJC seeks information about the rate of representation for detained individuals, to determine if detention of immigrants in remote facilities prevents meaningful access to legal counsel. The information necessary to shed light on these facts is in the control of multiple different agencies. Without the ability to reference A numbers, the requestor will be functionally unable to compare documentation across agencies and thus will be unable to use the information to shed light on the agency's performance of its duties. This substantial interest outweighs any minimal intrusion into people's private lives entailed by disclosing A numbers.

A copy of NIJC's FOIA request is enclosed. In addition, a copy of NIJC's appeal dated April 20, 2011 is also included.

For those reasons, the department should reverse ICE's refusal to provide A numbers and the other information it failed to provide. If ICE's refusal to disclose the above information is affirmed in whole or in part, please provide the reason(s), pursuant 6 C.F.R. §5.9(b) and 8 USC §552, so that any appeal can be focused on the alleged deficiency.


We anticipate a response to this appeal from your office within 20 business days, as stipulated by 5 U.S.C. § 552(a)(6)(A)(ii).

Thank you for your attention to this matter. Please contact us at mruiizvelasco@heartlandalliance.org or 312/660-1360 if you have any questions or would like any clarification of the requests above.

Sincerely,


Mony Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center




U.S. Department of Homeland Security
800 N. Capitol St. NW STOP-5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

April 20, 2011

MONY RUIZ-VELASCO
NIJC
HEARTLAND ALLIANCE
208 S. LASALLE ST. SUITE 1818
CHICAGO, IL 60604

Dear Sir or Madam:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement seeking disclosure of any and records, including electronic documents and communications in the custody DHS/ICE, (sic) for all minors in ICE custody from October 1, 2008 through September 30, 2010.

On behalf of the Chief for the Government Information Law Division, we acknowledge your appeal request of **2011FOIA4455** and are assigning it number **OPLA11-153** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.¹ While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact ICE FOIA at 1-202-732-0300, or by email at ice-foia@dhs.gov.

Sincerely,



Susan Mathias
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

¹ Appeals of expedited treatment denials will be handled on an expedited basis.



Sent Via U.S. First Class Mail

December 20, 2010

Ms. Carrina Pavlik Keenan, FOIA Officer
Immigration and Customs Enforcement
Freedom of Information Act Privacy Office
800 North Capitol Street, NW, Room 585
Washington, DC 20536-5009

Re: Freedom of Information Act Request

Dear Ms. Pavlik-Keenan:

This letter constitutes a request for information pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552 on behalf of Heartland Alliance's National Immigrant Justice Center ("NIJC"). NIJC is a not-for-profit agency that provides immigration legal services to low-income immigrants, refugees and asylum seekers. NIJC seeks information regarding the number of minors in the custody of Department of Homeland Security ("DHS"), including Immigration and Customs Enforcement ("ICE") who are determined to not fall within the definition of "unaccompanied" as defined by 6 U.S.C. §279(g)(2). For that purpose, NIJC seeks disclosure of any and all records, including all electronic documents and communications in the custody DHS/ICE, which fit the following description:

1. Please provide the following electronic records from the DHS's central database for all minors in ICE custody from October 1, 2008 through September 30, 2010. Please provide the data :
 - (a) As to each respondent, the zip code of their home address (NIJC assumes that the full address would be protected by privacy laws);
 - (b) Year and month of birth for each individual/respondent;
 - (c) A Number for each individual/respondent.
 - (d) Date of apprehension by DHS, including ICE, for each individual;
 - (e) Date of release from detention for each individual;
 - (f) Date individual was transferred to the care of the Office of Refugee Resettlement ("ORR") for minors determined to be "unaccompanied;"
 - (g) The Immigration Court which handled the individuals' case;
 - (h) The time period case was assigned to each individual court listed;
 - (i) If individual was not transferred to ORR's custody, date individual was released from DHS's custody;
 - (j) Custody history for each individual, including date detained and date released;
 - (k) An electronic record of whether or not any EOIR-28 forms were filed in the case;
 - (l) Date of filing of E-28(s) by attorney(s) or representative(s), if any;
 - (m) An electronic record of whether or not any G-28 forms were filed in the case;
 - (n) Date of filing of G-28(s) by attorney(s) or representative(s), if any;
 - (o) End date of representation for each attorney;

- (p) Date Notice to Appear (NTA) was issued to each individual;
- (q) Date NTA was filed with the immigration court for each individual;
- (r) Date of first master calendar hearing, if any;
- (s) Date of conclusion of removal proceedings;
- (t) Forms of relief (if any) which were sought in the case;
- (u) Whether those relief applications were granted or denied;
- (v) The address of all detention centers where each individual is or was held;

Please provide a single report generated from ICE's centralized computer database with all of the fields requested above and in which each individual/respondent is identified by his or her A number. Please prepare the report in such a way that it will be accessible using a standard database program (such as Excel). Data in a delimited field database is also acceptable. If a delimited field database is used, please indicate the delimiter (tab, comma, etc.). Compact discs are the preferred media. Please provide data that is current as of the day of production of the data.

2. Please provide records which explain any coding included in the response to request #1, so as to enable us to understand your response to the FOIA request.

To the extent that these reports include information relating to particular individuals who might have privacy interests in their contents, please excise this information in the least disruptive manner possible, so as to permit the report to be understood in the absence of that material.

This information is sought for the purpose of determining the number and locations of minors held in the custody of ICE, including those transferred to ORR custody. NIJC seeks to analyze the length of detention for minors in ICE custody.

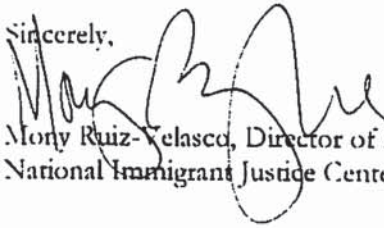
If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each record. Please also state the number of documents or portions thereof being withheld, the number of pages of each document being withheld, and the dates of the documents being withheld. If some portion(s) of the requested materials are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i).

The documents subject to this request are not sought for any commercial use; they will be used to educate the American public regarding any delays in handling detained immigration cases. Thus, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. §552(a)(4)(A)(iv)(II). As to any additional search expenses, please waive any fees because disclosure of the requested information will contribute significantly to public understanding of the governmental activities identified above. 5 U.S.C. §552(a)(4)(A)(iii). The question of delays in deciding immigration cases has been the subject of significant public interest; it would be in the public's interest to understand this phenomenon better. If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before filing this request.

Please reply to this request within twenty working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i).

If you have any questions regarding this request, please feel free to contact me via email at mruiizvelasco@heartlandalliance.org or call me at my direct line, 312-660-1360. Thank you in advance for your kind attention to this matter.

Sincerely,



Mary Ruiz-Velasco, Director of Legal Services
National Immigrant Justice Center



Shipment Receipt
Address Information

Ship to:
Attn: FOIA Appeal
DHS Offc of Principal Legal Advisor
800 N CAPITOL ST NW
STOP 5009

Ship from:
Mony Ruiz-Velasco
Heartland Alliance- NIJC
208 S LaSalle St., Suite 1818

WASHINGTON, DC
20536-5096
US
202-732-0300

Chicago, IL
60604
US
3126601360

Shipping Information

Tracking number: 797196829973
Ship date: 06/13/2011
Estimated shipping charges:

Package Information

Service type: Standard Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 1LBS
Declared value: 0.00USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information

Bill transportation to: NIJC-169
Your reference: Detention
P.O. no.: Kids FOIA Appeal
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income, interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

EXHIBIT E

U.S. Department of Homeland Security
800 N. Capitol St., NW STOP 5009
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

September 22, 2011

MONY RUIZ-VELASCO
NIJC, HEARTLAND ALLIANCE
208 S. LASALLE ST., SUITE 1818
CHICAGO, IL 60604

RE: OPLA11-204, 2011FOIA4455

Dear Mr. Ruiz-Velasco:

This is in response to your June 13, 2011 letter, appealing the adverse determination concerning your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records, including electronic documents and communications in the custody DHS/ICE (sic) for all minors in ICE custody from October 1, 2008 through September 30, 2010. You have appealed the exemptions applied to the records provided to you in the initial determination letter dated June 10, 2011.

U.S. Immigration and Customs Enforcement (ICE) denied your request in part by withholding records pursuant to the FOIA Exemptions, (b)(6), and (b)(7)(C) used in conjunction with Privacy Exemption (k)(2). We have reviewed the records in question that gave rise to this initial determination.

A search by the ICE Office of Enforcement and Removal Operations (ERO) produced four-hundred seventy (470) pages of records responsive to your request. A total of four-hundred seventy (470) pages of Excel Spreadsheets were withheld in part pursuant to the FOIA Exemptions listed above. You have appealed the withholdings applied to these documents. Specifically, you have appealed the use of (b)(6) and (b)(7)(C) to the filing date in one of the spreadsheets. You also have appealed the adequacy of the search as to the information lacking several of the bullet pointed items in your request.

Our analysis follows.

The reasoning behind the use of these exemptions in the initial determination was provided to you in the letter dated April 7, 2011.

You have specifically indicated that A-numbers and birth dates should not have been withheld under (b)(6) and (b)(7)(C). You also have appealed as to the use of Privacy Act Exemption (k)(2). The application of (k)(2) was improper, and as such, is reversed for the purposes of this appeal, although no additional information is releasable with the removal of (k)(2) from the exempt material within the documents provided to you.

www.ice.gov

EXHIBIT

E

As to the application of (b)(6) and (b)(7)(C) to withhold the A-numbers and birth dates, the use of the knowledge of this information, in combination with the other information released, could be used to determine the identity of the individual who is the subject of the proceedings.¹

Upon a complete review of the information withheld in the initial determination on your FOIA request, the withholding of this information was proper in all respects, and the information is exempt from disclosure under the applicable provisions of 5 U.S.C. § 552 cited above.

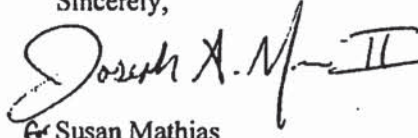
Furthermore, ERO indicated that all other requested data points not responded to are either not available, or are otherwise not tracked by the IIDS database. Upon complete review of the search conducted by ERO, the search was proper in all respects and was reasonably calculated to uncover all relevant documents.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is OPLA11-204, and the FOIA case number, which is 2011FOIA4455.

Sincerely,



Susan Mathias

Chief

Government Information Law Division

ICE Office of the Principal Legal Advisor

Department of Homeland Security

¹ See, Fritz v. IRS, 862 F. Supp. 234, 236 (W.D. Wis. 1994).